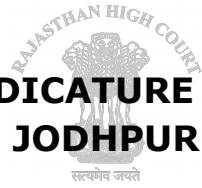




[2024:RJ-JD:29258]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12884/2019

Monika Kanwar Rathore D/o Shri Santosh Singh Rathore, Aged
About 25 Years, R/o Krishna Villa, Savina Khera Link Road,
Savina, Udaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Mines And Geological, Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Rajasthan Public Service Commissioner, Ajmer Through Its Secretary, R.p.s.c., Ajmer.
3. Assistant Secretary, R.p.s.c., Ajmer.

-----Respondents

For Petitioner(s) : Mr. K.D. Charan
Mr. D.S. Sodha
Ms. Monika Kanwar Rathore,
petitioner present in person

For Respondent(s) : Mr. J.K. Mishra, DyGC
Mr. Rajesh Poonia

HON'BLE MR. JUSTICE FARJAND ALI**Order****Order pronounced on : 23/07/2024****Order reserved on : 16/07/2024****REPORTABLE**

1. The petitioner appeared on two occasions before this court for hearing of the case since her counsel was not available and she urged her predicament of not giving appointment by the State authorities despite her eligibility. In these circumstances, on 15.07.2024, when the matter was listed, Mr. K.D. Charan, Advocate, who was present in the court, was requested to render legal assistance to the petitioner. He very generously offered to



provide his pro bono services to the petitioner. The matter was posted for 16.07.2024. On that day Mr. D.S. Sodha, Advocate, also joined learned counsel Mr. K.D. Charan, to provide assistance to the petitioner. The petitioner was also present on that day. Since the parties were fully prepared for arguments, the matter was heard and the order was kept reserved.

2. The instant writ petition under Article 226 has been preferred by the petitioner seeking a direction for the respondents to conduct her medical examination for the purpose of assessing her height and accord her appointment on the post of Geologist in pursuance of the advertisement dated 10.02.2016 with all consequential benefits.

3. Succinctly stated, facts relevant and essential for disposal of the instant writ petition are that the Rajasthan Public Service Commission published an advertisement dated 10.02.2016 inviting applications from eligible candidates for filling up various posts including 14 posts of Geologists for the Mines and Geology Department, which were mentioned at S.No.11 in the table providing details of vacant posts and reservation. The number of posts were subsequently increased to 21 vide corrigendum dated 28.07.2017. The petitioner considering herself to be eligible for the post, submitted her application within the stipulated time in General Woman category. She appeared in the written examination held on 24.04.2018, the result of which was declared on 15.06.2018. The roll number of the petitioner also found place in the provisional merit list of the candidates who were called for



interview. The petitioner appeared in the interview and secured 66 marks, whereas the cut off marks for General Woman category were 65. On 19.12.2018, the respondents declared the final list of selected candidates for the post of Geologist. The Roll number of the petitioner found place at S.No.15 in the merit list. Thereafter in pursuance of the letter dated 06.02.2019, the petitioner appeared for medical examination at the Sawai Man Singh Hospital, Jaipur on 13.02.2019. On 03.06.2019, the respondents issued appointment letter to 20 candidates, but the name of the petitioner was not included therein. On contacting the respondents, the petitioner was verbally informed that she was not given appointment due to not fulfilling the criteria of minimum height as she was having height of 139 cm against the required height of 140 cm. The petitioner got conducted medical examination on her own at Maharana Bhupal Hospital, Udaipur and as per the certificate issued from there, her height is 141 cm. The petitioner also got conducted her medical examination from the Sawai Man Singh Hospital, Jaipur and as per the certificate issued, her height is 140.3 cm. The petitioner submitted a detailed representation to the respondent requesting them to consider her candidature for the post of Geologist on the basis of the aforesaid certificates and in the alternative, she prayed for relaxation in the criteria of height. She also prayed for re-conducting her medical examination for assessment of height. The matter of the petitioner was forwarded to the higher authorities and the Secretary, Mines and Geology Department requested the Superintendent, Sawai Man Singh Hospital, Jaipur vide letter dated 27.06.2019 to conduct medical examination of the





petitioner for the purpose of height measurement. In the letter, it has been mentioned that as per the DOP letter dated 01.01.1975, the minimum height for the post of Geologist must be 140 cm. When no further steps were taken for two months, the petitioner preferred the instant writ petition.

4. Learned counsel for the petitioner submits that the action of the respondents to deny appointment to the petitioner is ex facie illegal, arbitrary, unfair and unreasonable. The petitioner is possessing all the requisite educational qualifications and she is physically fit for appointment on the post of Geologist. The name of the petitioner appeared at S.No.15 in the final merit list and the respondents have already given appointments to the candidates at S.No.14 and 16. The argument of the learned counsel is that neither the advertisement issued by the Rajasthan Public Service Commission nor the Rajasthan Mines and Geological Service Rules, 1960 mention about the criteria of minimum height for the post of Geologist, thus, the act of the respondents in denying appointment to the petitioner is arbitrary and illegal. The further argument of the learned counsel for the petitioner is that the petitioner has on her own got her medical examination conducted from the two Government hospitals, namely, Maharana Bhupal Hospital, Udaipur and Sawai Man Singh Hospital, Jaipur, and on both occasions her height was declared to be above 140 cm and thus, the petitioner is fulfilling the criteria of height. The alternative submission of the learned counsel for the petitioner is that even if it is assumed that the height of the petitioner is short by 1 cm from the minimum height prescribed, still she should be



given relaxation because such minuscule difference in height would not affect the performance of a person in discharge of duty as a Geologist. This argument is further fortified from the fact that the such relaxation is prescribed for certain candidates to be appointed on the post of Geologist. Even persons with locomotor disabilities are also not debarred from appointment on the post of Geologist. With these grounds, learned counsel for the petitioner prays for acceptance of the writ petition and seeks direction for the respondents to afford appointment to the petitioner expeditiously.

5. Per contra, learned counsel for the respondent opposed the submissions made by the learned counsel for the petitioner and submits that advertisement dated 10.02.2016 at point No.7 of general guidelines clearly mentioned that candidate must be physically and mentally fit and he has to be ready to appear for medical examination as desired by the appointing authority. The respondent RPSC declared the result and recommended names of the candidates for appointment, who were found eligible for appointment. In pursuance of the recommendation made by the RPSC, the State Government directed the candidates to appear for medical examination. The petitioner appeared for the medical examination at Sawai Man Singh Hospital, Jaipur and in the report forwarded by the medical board, it was mentioned that she was 'Unfit on account of substantial height i.e. 139 cm (one hundred thirty nine centimeter) for Geologist Post Technical Group 'A' post as per DOP letter 1.1.1975', thus, the action of the respondents in denying appointment for the reason of not meeting minimum



requisite height is within the domain of the State Government and thus, no illegality has been committed. Learned counsel made reference to the Instructions as to the Physical Examination of Candidates for Admission into Various State Services under the Government of Rajasthan, dated 01.01.1975, wherein for Technical Group-A, e.g. Engineering Services and Medical Services, the minimum height prescribed for woman is 150 cm and the height relaxable in the case of Medical and Engineering personnel is upto 140 cm for woman. Learned counsel submits that even after applying this relaxation, the petitioner is still not meeting the minimum required height, therefore, the petitioner was rightly denied appointment on the post of Geologist. Learned counsel further submits that the respondents have not committed any procedural illegality or irregularity and have acted strictly in accordance with the rules and instructions, thus, the writ petition lacks merit and deserves to be dismissed.

6. Heard learned counsel for the parties and perused the material available on the record.

7. The respondent Rajasthan Public Service Commission invited applications for various posts, including the post of Geologist, for the Mines and Geology Department, Government of Rajasthan. The required educational qualifications for the said post, as per the advertisement are :-

"Post graduate degree in Geology or Applied Geology from a University established by Law in India Or Diploma in Applied Geology from Indian School of



Mines and Applied Geology Dhanbad or a qualification declared equivalent by the Govt."

The petitioner is possessing the Degree of M.Sc. in Geology and has worked as Guest Faculty in the Geology Department of Mohanlal Sukhadiya University. As per the documents placed on record, she was also pursuing Ph.D. in Geology. Thus, admittedly, she is having the requisite educational qualification for appointment to the post of Geologist. The respondents are also not disputing the same. The petitioner appeared in the written examination and upon declared qualified for interview, she appeared in the interview. After interview when the final merit list was published on 19.12.2018, the petitioner's name found place at S.No.15, however, when appointment order dated 03.06.2019 was issued, the petitioner's name did not appear there, whereas candidate at Merit S.No.14 Kumari Bhawna Joshi and candidate at Merit S.No.16 Kumari Prerna Kumari were afforded appointment. Upon enquiry, the petitioner was informed that she has been found ineligible for appointment on account of lack of meeting the criteria of possessing minimum height.

8. The post of Geologist for which the petitioner applied is governed by the Rajasthan Mines and Geological Service Rules, 1960. Rule 14 of the said rules prescribes criteria of physical fitness for the candidates for direct recruitment. For ready reference, Rule 14 is quoted hereinbelow :-



"(14.) Physical fitness:- A candidate for direct recruitment to the service, must be in good mental and bodily health and free from any mental and physical defect likely to interfere with efficient performance of his duties as a member of Service and if selected must produce a certificate to that effect from a medical Authority notified by the Government for the purpose. The Appointing Authority may dispense with production of such certificate in the case of a candidate promoted in the regular line of promotion or who is already serving in connection with the affairs of the State if he has already been medically examined for the previous appointment and the essential standards of medical examination of the two posts held by him are held to be comparable for efficient performance of duties of the new post and his age has not reduced his efficiency for the purpose."

Upon a bare reading of the aforesaid Rule, it is clear that the relevant service rules does not prescribe the criteria of minimum height for appointment to the post of Geologist.

9. The respondents have denied appointment to the petitioner taking resort to the Instructions as to the Physical Examination of Candidates for Admission into Various State Services under the Government of Rajasthan issued on 01.01.1975. They have referred to clause 2 (b) of the instructions, which reads as under :-



"(b) However for certain services the minimum standards for height and chest girth without which candidates cannot be accepted, are as follows :-

		Chest		Girth
		(Fully expanded)		
		Height		Expansion
(i)	Technical, Group-A e.g. Engineering Services and Medical Services	152 cms	84 cms	5 cms (for men)
		150 cms	79 cms	5 cms (for women)
(ii)	xx	xx	xx	xx
(iii)	xx	xx	xx	xx

Height relaxable in the case of Medical and Engineering personnel upto 150 cms for men and 140 for women.

The minimum height prescribed is relaxable in case of candidates belonging to races such as Gorkhas, Garwalis, Assames and Nagaland Tribals etc., whose average height is distinctly lower."

10. I have gone carefully gone through the instructions and it would be appropriate to quote certain clauses of the document :-

"II. These instructions are intended to provide guidelines to the Medical Examiners. A candidate who does not satisfy the minimum requirements prescribed in these instructions cannot be declared fit by the Medical Examiners. However, while holding that a candidate is not fit according to the norms laid down in these instructions **it would be permissible for a Medical Board to recommend to the Government of Rajasthan for reasons specifically recorded in writing that he/she may be admitted to service without disadvantage to Government.** If any doubt arises relating to the application and scope of these instructions it shall be referred to the Government in





the Department of Personnel, whose decision thereon shall be final.

III. These Instructions are being published for the convenience of candidates and in order to enable them to ascertain the probability of their coming up to the required physical standard.

IV. The Government of Rajasthan, however, reserve to themselves, **absolute discretion to reject or accept** any candidate after considering the report of the Medical Board.

V. For the purpose of these Instructions the various State Services will generally be divided in two broad classes based on special physical requirements of the service concerned viz. (i) Technical Services and (ii) Non-Technical Services. Technical Services will be subdivided into two groups. The division and grouping of various services will generally be as under, but Government may add new services to these classes or groups or may make such modifications or exceptions generally for special posts included in these services as may be considered necessary from time to time.

VI. Division and grouping of services:-

1. Technical Services:

Group A- Requiring mostly special acuity of vision:-

(i) Engineering Services;

(ii) Medical Services;

This will include State Services, like Rajasthan Service of Engineers (Buildings and Roads Branch), The



Rajasthan Service of Engineers (Irrigation Branch), The Rajasthan Service of Engineers (Public Health Branch), The Rajasthan Ground Water Service, The Rajasthan Mines and Geology Service, The Rajasthan Agriculture (Engineering) Service, The Rajasthan Medical and Health Service (including all Pathies) including Collegiate Branch, Animal Husbandry Services, and Rajasthan Town Planning Service.

Group B- Requiring mostly special physique:-

- (1) Rajasthan Police Service;*
- (ii) Rajasthan Home Guards Service;*
- (iii) Rajasthan Excise Service (Preventive Branch);*
- (iv) Rajasthan Jails Service;*
- (v) Rajasthan Forest Service;"*

Clause V aforesaid provides classification of various State Services based on special physical requirements. The post of Geologist comes under the category of Technical Services. The Technical Services have further been classified into two categories, viz. Group-A and Group-B. The Rajasthan Mines and Geology Service comes under Group-A which mostly requires special acuity of vision, whereas Group-B services require mostly special physique. Thus, the instructions itself have not put the post of Geologist under the category requiring special physique and the present case is related to height of the aspirant only and height is definitely an attribute of special physique, which is not the demand of the Instructions issued by the State.

11. In the opinion of this court, the purpose of prescribing certain physical criteria for various posts is to ensure that the



candidate appointed on a particular post is able to perform his duties in an efficient way and does not hamper the system. While adjudging suitability of a candidate, the nature of work and duties of a post have to be taken into account. It would not be out of place to quote here the duties and work of a Geologist, which are extracted from a document originated from the website of the Mining and Geology Department, Government of Rajasthan :-

"11. DUTIES OF GEOLOGIST (HQ) :

He shall assist Sr. Geologist (HQ) in :

- 1. Compilation of field programme proposals received from various offices and submits to the Sr. Geologist (HQ) for scrutinizing.*
- 2. Compilation of all monthly, quarterly and annual progress reports and submits to Sr. Geologist (HQ).*
- 3. Prepare monthwise/quarterwise statements of achievements and salient achievements of Mineral Survey & Prospecting work carried out during the last month/quarter.*
- 4. Prepare quarterly and annual progress reports of Mineral Survey & Prospecting work carried out during the quarter/year. The progress reports so prepared/complied shall be submitted to the Sr. Geologist.*
- 5. Will prepare draft proposals for reservation and de-reservation of area for departmental prospecting or for any other agency, received from various offices of the department or organisations like GSI, IBM, MECL etc. and submit to the Sr. Geologist (HQ) for scrutinizing.*
- 6. Monitoring the pendency of the final project reports and put up details of pending reports of the completed projects to the Sr. Geologist (HQ).*
- 7. Will make necessary preparations for arranging State Geological Programming Board meeting.*



8. Prepare review material for Central Geological Programming Board meeting and its various sub-committees.

9. Any other work assigned by Sr. Geologist/Superintending Geologist (HQ)/DMG.

12. GEOLOGIST (REMOTE SENSING CELL) :

The Geologist shall ;

1. Carry out visual interpretation of aerial photographs and satellite data and prepare various thematic maps for the project area taken in the field programme.

2. Carry out digital image processing and analysis of satellite data for geological and environmental applications.

3. Carry out field checks as & when required.

4. Digitization of various maps, development of geographical information system, statistical modeling, generate favourability maps for selecting mineral surveys and prospecting sites 5. Suggests the sites for geophysical and geochemical prospecting.

6. Carry out any other work as assigned by Sr. Geologist (R.S.) or other senior officer.

13. GEOLOGIST (PUBLICATION CELL) :

1. General supervision of work of the staff of publication cell.

2. Preparation of Annual administrative report every year.

3. Preparation of Annual progress report of the department for the budget session of legislative assembly.

4. To assist Senior Geologist (Publication) in editing and printing work of Rajasthan Mineral Bulletin (quarterly).





5. To supervise the physical bibliographical (binding of publication work) and distribution work of all technical and administrative publications of DMG.

6. To prepare reprograph booklet as per instructions or Senior Geologist (publication).

7. Preparation of press note as directed.

8. To assist Senior Geologist in preparation of mineral wise publications as prepared by Senior Geologist (Publication).

9. To arrange sale of various technical publications of the department.

10. Translation work from English to Hindi as and when assigned by Senior Officers.

11. To supervise the photo-coping work and procurement or various parts and stationary for smooth working.

12. All other work assigned by Senior Geologist (Publication) and Senior Officers of the department with respect to publication cell.

14. GEOLOGIST (MINERAL EVALUATION CELL) :

The Geologist shall:

1. Undertake Evaluation of mineral properties in lease hold areas.

2. Preparation of geological maps, plans of lease hold areas and assessment of ore reserves.

3. Preparation of geological reports of lease hold with maps, plans etc. and submit to Sr. Geologist concerned and Publication Cell.

4. Study the favourable geological structures for mineral localisation in lease hold areas, their interpretation.

5. He will maintain all the records of drilling, core logging sampling and accounts of expenditure muster rolls etc. of investigation project.





6. He will maintain the daily field diary of investigation carried out by him during the investigation in lease hold areas.

7. Take up any other work as may be assigned by the controlling officer and Director."

From a perusal of the above, it is revealing that neither the duties assigned to a Geologist has any nexus with height nor there is any possibility that a little shortness in height (1 cm) would hamper the work assigned. This opinion of the court is further fortified from the fact that certain classes of candidates are given relaxation in height criteria and they are supposed to do the exact same work, viz. Gorkhas, Garwalis, Assames and Nagaland Tribals etc., whose average height is distinctly lower. Even a person with locomotor disability or cerebral palsy is not debarred from appointment on the post of Geologist, rather in the advertisement dated 10.02.2016, one post has been kept reserved for LD/CP category. Thus, this court is of the considered opinion that if any deviation is made from the instructions issued, no disadvantage shall be caused to the Government or public at large since the same will not impede smooth course of her duty.

12. Now coming to the point whether the instructions are mandatory in nature, it is worthwhile to refer to point II of the instructions, which provides that these instructions are intended to provide guidelines to the Medical Examiners. It is further mentioned that it would be permissible for a Medical Board to recommend to the Government of Rajasthan for reasons



specifically recorded in writing that he/she may be admitted to service without disadvantage to Government. Thus, it is clear that the medical board itself is assigned discretion to recommend a candidate for appointment even if he or she does not fulfil the criteria provided under the instructions. Further under clause IV of the instructions, the State Government has reserved absolute discretion to accept or reject a candidate after considering the report of the medical board. Hence, it is abundantly clear that the instructions dated 01.01.1975 are not mandatory in nature, rather they are guidelines issued for convenience. The statutory rules, i.e, The Rajasthan Mines and Geological Service Rules, 1960 nowhere prescribes any criteria of height for appointment to the post of Geologist. The Rules of 1960 were framed under Proviso to Article 309 of the Constitution and have statutory force. On the other hand, the Instructions dated 01.01.1975 are merely guidelines issued for convenience and cannot have statutory force and overriding effect upon the Rules of 1960. The view of this court is fortified by the judgment passed by Hon'ble Supreme Court in the case of **Ashok Ram Parhad & Ors. Vs. State of Maharashtra & Ors. [(2023) 03 SC CK 0046]**, wherein it is held that in service jurisprudence, the service rules are liable to prevail. There can be Government resolutions being in consonance with or expounding the rules, but not in conflict with the same.

13. The post of Geologist does not fall under the category of a post with uniform like Police, Defence and Paramilitary Services,





where rigid criteria of physique are required to be enforced. All the other candidates from the merit list have been afforded appointment and the petitioner has been deprived of the same on the basis of height, despite her being eligible and suitable in all aspects. Since the statutory rules framed regarding recruitment of the personnel in the Mines and Geology Service does not prescribe any minimum height for the candidates, thus, the act of the respondents in denying appointment to the petitioner is a discrimination based on physical attribute. Doing discrimination on account of height of an aspirant in services, where height of the individual has no bearing and in no manner influence performance of the worker in the job is certainly violative of his/her fundamental rights guaranteed by the Constitution of India. Being constitutional court, this court would not allow the executive or any department to do discrimination among candidates on this count alone when otherwise they are eligible. In these circumstances, this court is of the firm view that simply because the petitioner is 1 cm short in height than the minimum height prescribed in the guidelines, she cannot be deprived from getting appointment for which she is fully eligible.

14. The vacancy was advertised in the year 2016 and the final merit list was published on 19.12.2018. Against 21 vacancies, 20 candidates have been given appointment vide order dated 03.06.2019. The petitioner preferred this writ petition in August 2019. An interim order was passed in favour of the petitioner vide order dated 29.08.2019, which was modified on 03.09.2019,





whereby one post of Geologist in General Woman Category was ordered to be kept vacant. Now almost five years have passed and the interim order is in currency in favour of the petitioner. The petitioner has suffered a lot of hardship and is facing recurring financial loss.

15. In light of the discussions made hereinabove, this court concludes that the action of the respondents in denying appointment to the petitioner on the post of Geologist is declared arbitrary, perverse and against the principles of law as well. She is declared eligible for appointment. Accordingly, the writ petition is allowed. The respondents are directed to grant appointment to the petitioner on the post of Geologist in category of General Woman, which is kept vacant in compliance of the interim order passed by this court. The needful shall be done within a period of two months from today.

16. Before parting with the matter, this court would like to appreciate the assistance of learned counsel Mr. K.D. Charan and Mr. D.S. Sodha, who were instructed by this court to render assistance to the poor petitioner and they offered their pro bono services and have aptly assisted the court on the questions of facts and law.

17. No orders as to costs.

(FARJAND ALI),J

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